

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

TIMOTHY ATCHISON,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

Civil Action No. 3 : 11 - cv - 39
(Kanawha County Civil
Action No. 10-C-2233

NOTICE OF REMOVAL

Defendant Novartis Pharmaceuticals Corporation (“NPC”), by its attorneys, Bachmann Hess Bachmann & Garden, PLLC, and pursuant to 28 U.S.C. §§ 1332, and 1441, hereby files this Notice of Removal with respect to the case identified as Timothy Atchison v. Novartis Pharmaceuticals Corporation, Civil Action No. 10-C-2233, from the Circuit Court of Kanawha County, West Virginia. In support of this Notice, Defendant states as follows:

Timeliness of Removal

1. Upon information and belief, on or about December 14, 2010, plaintiff Timothy Atchison (“Atchison” or “Plaintiff”) filed a Complaint (the “Complaint”) with the Clerk of the Circuit Court of Kanawha County, West Virginia. (A true and correct copy of the Summons and Verified Complaint, along with all affidavits of service filed in the Circuit Court of Kanawha County, West Virginia are annexed hereto as Exhibit A).

2. Upon information and belief, the Summons and Complaint was served on the Secretary of the State of West Virginia on or after December 16, 2010, and was

subsequently delivered to Defendant by the Secretary of State on or about December 21, 2010.

3. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), in that it is being filed within thirty (30) days after Defendant's receipt of the Summons and Verified Complaint, which is the "pleading . . . from which it may first be ascertained that the case is one which is . . . removable."

Basis for Removal

4. Title 28, Section 1332 provides that "the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between (1) citizens of different States." 28 U.S.C. § 1332(a)(1).

5. Here, there is complete diversity among all parties. Plaintiff has at all relevant times resided in the State of West Virginia, and therefore, is a citizen of the State of West Virginia (Compl. ¶ 2). Defendant NPC is a citizen of the State of New Jersey, in that it is a corporation existing under the laws of the State of Delaware and has its principal place of business in the State of New Jersey. Accordingly, Plaintiff and Defendant are citizens of different states, and there is diversity between the parties.

6. Additionally, upon information and belief, and based on Plaintiff's Complaint and his counsel's representations, the amount in controversy herein is in excess of \$75,000.00, exclusive of interest and costs. That is because in the Complaint, Plaintiff seeks (1) compensatory and punitive damages, (2) treble damages pursuant to the West Virginia Wage Payment and Collection Act, W.Va. Code § 21-5-4(e), and (3) attorneys' fees pursuant to W.Va § 21-5-12(b) (Compl. ¶¶ 9, 12, and Wherefore Clause,

at pgs. 2-3). Although Defendant disputes Plaintiff's claims, based on the well pleaded complaint rule, it must accept them as true for the purposes of removal. Because there is complete diversity of citizenship and because the amount in controversy exceeds \$75,000.00, this Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1441(b).

7. Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." Under 28 U.S.C. § 129(b), this Court embraces the Circuit Court of Kanawha County, West Virginia. Accordingly, this Court is the appropriate Court to which Defendant should remove this action. 28 U.S.C. § 1441(a).

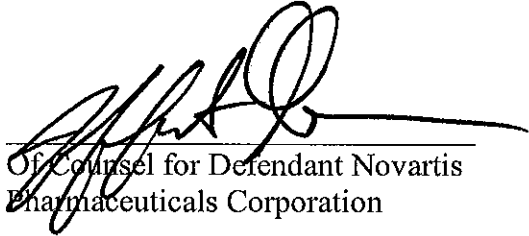
8. In all, because diversity of citizenship exists under 28 U.S.C. § 1332(a)(1) and the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332(a), this case is within the original jurisdiction of this Court and is subject to removal under 28 U.S.C. § 1441(a).

9. In accordance with 28 U.S.C. § 1447(b) of this Court, together with the Complaint, the aforementioned documents constitute "all records and proceedings" in the state court.

10. Defendant will file a copy of this Notice of Removal with the Clerk of the Circuit Court of Kanawha County, West Virginia, 409 Virginia Street East, Charleston, West Virginia 25301, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

11. Defendant reserves all defenses.

WHEREFORE, Defendant prays that the above-referenced civil action proceed in the United States District Court for the Southern District of West Virginia as an action properly removed thereto.



Of Counsel for Defendant Novartis
Pharmaceuticals Corporation

JEFFREY A. GROVE, ESQ. (#6065)
BACHMANN HESS BACHMANN & GARDEN, PLLC.
P.O. Box 351
Wheeling, WV 26003
Phone (304) 233-3511

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

TIMOTHY ATCHISON,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

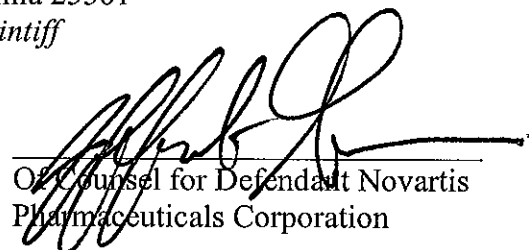
Defendant.

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: Civil Action No. 3:11-cv-39
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: Action No. 10-C-2233
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CERTIFICATE OF SERVICE

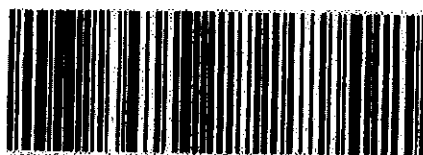
Service of the foregoing **NOTICE OF REMOVAL** was had upon the following via electronic filing and by mailing a true copy thereof by United States Mail, postage prepaid, this 14 day of January, 2011.

Todd S. Bailess, Esq.
Bailess Law, PLLC
227 Capitol Street
Charleston, West Virginia 25301
Attorneys for Plaintiff


Of Counsel for Defendant Novartis
Pharmaceuticals Corporation

JEFFREY A. GROVE, ESQ. (#6065)
BACHMANN HESS BACHMANN & GARDEN, PLLC.
P.O. Box 351
Wheeling, WV 26003
Phone (304) 233-3511

Office of the Secretary of State
 Building 1 Suite 157-K
 1900 Kanawha Blvd E
 Charleston, WV 25305



9171 9237 9000 1000 3637 80



Natalie E. Tennant

Secretary of State

Telephone: 304-558-6000

Toll Free: 866-SOS-VOTE

www.wvsos.com

JAN 2011
RECEIVED
DONOTHY P. WATSON
LEGAL

Novartis Pharmaceuticals Corporation
 59 Route 10
 East Hanover NJ 07936

Control Number:

305592

Defendant:

Novartis
 Pharmaceuticals
 Corporation

Civil Action:

12/16/2010
 10-C-2233

I am enclosing:

<input type="checkbox"/> summons	<input type="checkbox"/> affidavit	<input checked="" type="checkbox"/> summons and complaint
<input type="checkbox"/> notice	<input type="checkbox"/> answer	<input type="checkbox"/> summons returned from post office
<input type="checkbox"/> order	<input type="checkbox"/> cross-claim	<input type="checkbox"/> summons and amended complaint
<input type="checkbox"/> petition	<input type="checkbox"/> counterclaim	<input type="checkbox"/> 3rd party summons and complaint
<input type="checkbox"/> motion	<input type="checkbox"/> request	<input type="checkbox"/> no return from post office
<input type="checkbox"/> suggestions	<input type="checkbox"/> certified return receipt	<input type="checkbox"/> notice of mechanic's lien
<input checked="" type="checkbox"/> interrogatories	<input checked="" type="checkbox"/> request for production	<input type="checkbox"/> suggestee execution
<input type="checkbox"/> original	<input checked="" type="checkbox"/> request for admissions	<input type="checkbox"/> Other
<input type="checkbox"/> subpoena duces tecum		

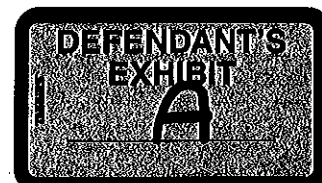
which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your unauthorized foreign corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on behalf as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Natalie E. Tennant

Natalie E. Tennant
 Secretary of State



SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TIMOTHY ATCHISON,

Plaintiff,

v.

Civil Action No: 10-C-2233
Judge: Webster

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

TO: Novartis Pharmaceuticals Corporation
59 Route 10
East Hanover, NJ 07936

To the above-named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Todd Bailess, 227 Capitol Street, Charleston, WV 25301 Plaintiff's attorney, an answer to the complaint filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You may assert in your answer any claim you may have against the plaintiff which is related to the subject matter of his complaint. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

Dated: 12-14-10

Cathy S. Gaston
CLERK
By: D. Dykes

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TIMOTHY ATCHISON,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

Civil Action No. 10-C-2233
Judge: *W. Hester*

FILED
RECORDED
DEC 14 PM 2:11
KANAWHA COUNTY CIRCUIT COURT

COMPLAINT

1. The Plaintiff, Timothy Atchison, brings this action against the Defendant, Novartis Pharmaceuticals Corporation for its failure to pay his employment wages in accordance with the West Virginia Wage Payment and Collection Act.

PARTIES

2. The Plaintiff was at all times relevant herein, a resident of Putnam County, West Virginia.

3. The Defendant was at all times relevant herein, conducting business in Kanawha County, West Virginia.

FACTS

4. Plaintiff worked for the Defendant from May 23, 2008, until he was discharged on September 24, 2010.

5. During the course of his employment, the Defendant failed to pay Plaintiff his employment wages due at least once in every two weeks as required by West Virginia law.

6. The Defendant also failed to pay Plaintiff his final employment wages and/or fringe benefits owed in full within seventy-two (72) hours of his discharge.

FIRST CAUSE OF ACTION
(Violation of West Virginia Wage Payment and Collection Act)

7. Plaintiff incorporates paragraphs 4-6 in support of the above-referenced cause of action.

8. Upon information and belief, Defendant only paid Plaintiff one time per month during the course of his employment with Defendant in violation of W.Va. Code § 21-5-1 *et seq.*

9. Defendant's actions violated the West Virginia Wage Payment and Collection Act entitling Plaintiff to treble damages and to attorney fees and costs pursuant to W.Va. Code §§ 21-5-4 and 21-5-12.

SECOND CAUSE OF ACTION
(Violation of Wage Payment and Collection Act - 72 hours)

10. Plaintiff incorporates paragraphs 4-6 in support of the above-referenced cause of action.

11. Defendant failed to pay Plaintiff his final employment wages and/or fringe benefits in full within seventy two (72) hours of Plaintiff's discharge in violation of W.Va. Code § 21-5-1, *et seq.* See Exhibit 1.

12. The Defendant's actions violated the West Virginia Wage Payment and Collection Act entitling the Plaintiff to treble damages and to attorney fees and costs pursuant to W.Va. Code §§ 21-5-4 and 21-5-12.

WHEREFORE, Plaintiff prays for the following relief:

1. Damages set forth in this Complaint, including all remedies afforded under the West Virginia Wage Payment and Collection Act, benefits and damages for


indignity, embarrassment, humiliation and emotional distress, and punitive damages in an amount to be determined by the jury;

2. Pre and post judgment interest as provided by law;
3. Attorney fees and costs; and
4. Such further relief as this court may deem just and equitable.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues triable to a jury.

Tim Atchison,
By Counsel.



Todd S. Bailess (WVSB# 10482)
Bailess Law, PLLC
227 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 342-0550
Facsimile: (304) 344-5529

NOVARTIS Novartis Pharmaceuticals
One Health Plaza
East Hanover, NJ 07936

Marital Status: Married
Federal: 3
State (WV): 0
Local: 0

Page 001 of 001
Period Ending: 09/30/2010
Advice Date: 09/24/2010
Advice Number: 0002255529
Batch Number: P44130001

Atchison, Timothy James
1019 Moss Creek Drive
Hurricane, WV 25526

Earnings	Rate	Hours	This Period	Year-to-Date
Regular Earnings: Sal			11633.33	103933.31
Bravo Reward Program			0.00	400.00
Bravo Push Reward			0.00	389.03
Commission			0.00	26547.00
Restricted Stock Unit Dividend			0.00	1360.09
Gross Pay			11633.33	104629.43

Deductions	Statutory	This Period	Year-to-Date
Federal W-H Tax		-1651.14	-21439.17
Social Security Tax		0.00	-6621.60
Medicare Tax		-165.98	-1898.66
WV W-H Tax		-605.00	-7038.00

Deductions	Other	This Period	Year-to-Date
Before Tax Dental		-25.00	-225.00
Before Tax Medical		-109.67	-987.03
NOV Invest Pre-Tax		-698.00	-7828.82
FSA-Health Care		-83.34	-750.06
Supplemental Life		-49.55	-443.57
Novartis PAC		-20.00	-180.00
Auto Deduction		-95.00	-855.00
Bravo Deduction		0.00	-250.00

Net Pay 8130.68

* This deduction reduces taxable gross.

Other Benefits and Information	This Period	Year-to-Date
Group Life Impute	31.50	278.80
NOV Invest Match	465.33	5219.19
Employer Contribu	232.67	2609.63

EMPLID 124144

Important Notes

NOVARTIS Novartis Pharmaceuticals
One Health Plaza
East Hanover, NJ 07936

Advice Number: 0002255529

Advice Date: 09/24/2010

Deposited to the account of

Atchison, Timothy James

Account Number 4770

Transit ABA

Amount

8130.68

THIS IS NOT A CHECK
THIS IS NOT A CHECK
NON-NEGOTIABLE

